

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Add Section 355
Title 14, California Code of Regulations (CCR)
Re: Ammunition Certification for Big Game and Nongame bird and Nongame mammal
Hunting in Condor Range

- I. Date of Initial Statement of Reasons: January 23, 2008
- II. Date of Final Statement of Reasons: April 23, 2008
- III. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: February 8, 2008
Location: San Diego, California
 - (b) Discussion Hearing: Date: March 7, 2008
Location: Stockton, California
 - (c) Adoption Hearing: Date: April 11, 2008
Location: Bodega Bay, California
- IV. Update

The regulation changes proposed establish a certification process to identify ammunition and projectiles that meet the “non-lead” standard set by the Commission in Sections 353 and 475 of Title 14, CCR. This proposal specifically establishes a public process by which the Department shall certify a list of centerfire rifle and pistol ammunition and projectiles that contain no lead ($\leq 1\%$) for use when hunting big game and nongame birds and nongame mammals in condor range as specified in subsection 353(h) Title 14, CCR. This process includes the type of information the manufacturer will need to supply for certification. It also establishes that certified ammunition and projectiles will be placed on a public list to facilitate compliance by hunters. Finally, it provides for a process by which ammunition or projectiles will be removed if/when errors in certification are discovered.

The regulation change proposed also adds projectiles to the certification process; includes pistols, muzzleloading firearms, and shotguns as subject to the requirement to use nonlead ammunition while hunting in Condor range; and clarifies that hunters using rimfire firearms to take nongame birds and nongame mammals must use nonlead ammunition while hunting in Condor range.

At its April 11, 2008 meeting in Bodega Bay, the Fish and Game Commission

unanimously adopted Option 2 noticed in the Initial Statement of Reasons.

V. Summary of Primary Considerations Raised in Opposition and in Support:

Primary considerations in support of the final regulation change are consistency with new statute (3004.5). Opposition was based on concerns regarding the scope of the geographic area and the Department and Commission's interpretation of the legislative intent of the new statute. These considerations were addressed in the responses to public comments (attached).

VI. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VII. Location of Department files:

Department of Fish and Game
1812 Ninth Street
Sacramento, California 95814

VIII. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No reasonable alternatives were identified.

(b) No Change Alternative:

The no change alternative would result in the Commission being out of compliance with the mandate of the Fish and Game Code as expressed in section 3004.5 and it would end most legal hunting for big game and nongame birds and nongame mammals in condor range.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective as and less burdensome to the affected private persons than the proposed regulation.

IX. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action have been assessed, and the following determinations regarding the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations only establish the process to certify ammunition and have no known private sector economic impacts.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None

(h) Effect on Housing Costs:

None

UPDATED INFORMATIVE DIGEST (Policy Statement Overview)

The Governor signed AB 821 into law in 2007 establishing section 3004.5 of the Fish and Game Code. This section states:

3004.5. (a) Nonlead centerfire rifle and pistol ammunition, as determined by the commission, shall be required when taking big game with rifle or pistol, as defined by Section 350 of the department's mammal hunting regulations, and when taking coyote, within the department's deer hunting zone A South, but excluding Santa Cruz, Alameda, Contra Costa, San Mateo, and San Joaquin Counties, areas west of Highway 101 within Santa Clara County, and areas between Highway 5 and Highway 99 within Stanislaus, Merced, Madera, Fresno, Kings, Tulare, and Kern Counties, and within deer hunting zones D7, D8, D9, D10, D11, and D13. (b) By July 1, 2008, the commission shall establish, by regulation, a public process to certify centerfire rifle and pistol ammunition as nonlead ammunition, and shall define, by regulation, nonlead ammunition as including only centerfire rifle and pistol ammunition in which there is no lead content. The commission shall establish and annually update a list of certified centerfire rifle and pistol ammunition.

Based on this section of the Fish and Game Code, the Commission adopted changes to Sections 353 and 475, Title 14, CCR that made more specific some of the above Code sections. The intent of the current proposed regulation change is to facilitate the above changes by identifying ammunition and projectiles that will be certified to meet the "non-lead" standard set by the Commission in Sections 353 and 475 of Title 14, CCR. This proposal specifically establishes a public process by which the the Department shall certify a list of centerfire rifle and pistol ammunition and projectiles that contain no lead for use when hunting big game and nongame birds and nongame mammals in condor range as specified in subsection 353(h) Title 14, CCR. This process includes the type of information the manufacturer will need to supply for certification. It also establishes that certified ammunition and projectiles will be placed on a public list to facilitate compliance by hunters. Finally, it provides for a process by which ammunition or projectiles will be removed if/when errors in certification are discovered.

The ultimate purpose of using ammunition and projectiles certified to contain no lead is to ensure that hunters are not exposing condors to secondary lead poisoning.

This proposal adds projectiles to the certification process. The statute identifies only ammunition to be certified. All ammunition is composed of

an ignition source, propellant, and projectile, all of which are housed in a cartridge. Only the projectile comes into contact with the intended target and therefore is the only component of ammunition that is relevant to potential lead poisoning of condors. In addition, many hunters manufacture their own ammunition for hunting. Because the statute does not recognize these facts, the proposal must focus on certifying the projectiles to be lead free for the intended result to be realized.

Another issue that the proposed regulation repairs relative to the statute is the reality that not all big game and nongame birds and nongame mammals are taken with centerfire rifles or pistols. Currently, both muzzleloading and shotguns may be used to take these animals. However, neither are defined as centerfire rifles and pistols. This proposal makes specific that those hunters using these firearms must use projectiles certified to be lead free.

Lastly, nongame birds and nongame mammals may be taken with rimfire firearms. This proposal makes specific that those hunters using rimfire firearms for hunting nongame birds and nongame mammals must use projectiles certified to be lead free.

Failing to certify and establish a list of ammunition and projectiles that meet the standard of non-lead ammunition as identified in subsection 353(h) Title 14, CCR, would result in the loss of most hunting opportunities for big game and non-game birds and mammals in condor range.

The code requires that this process be established by July 1, 2008. At its April 11, 2008 meeting in Bodega Bay, the Fish and Game Commission unanimously adopted Option 2 noticed in the Initial Statement of Reasons.